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8 IN THE DISTRICT COURT OF THE ELEVENTH JUDICIAL DISTRICT  
9 OF THE STATE OF MONTANA, IN AND FOR THE COUNTY OF FLATHEAD

10	STATE OF MONTANA ex rel.	)	Cause No. _____
11	DEPARTMENT OF HEALTH AND	)	
	ENVIRONMENTAL SCIENCES,	)	
12		)	
	Plaintiff,	)	
13		)	COMPLAINT
	v.	)	AND
14		)	APPLICATION
15	COLUMBIA FALLS ALUMINUM CO.,	)	FOR
	a Montana Corporation	)	INJUNCTION
16		)	
	Defendant.	)	
17	-----		

18 COMES NOW the Plaintiff who complains and alleges as  
19 follows:

20  
21 I.

22 PARTIES

23 1. Plaintiff DEPARTMENT OF HEALTH AND ENVIRONMENTAL  
24 SCIENCES ("DEPARTMENT") is an agency of the executive branch  
25 of government, duly created and existing under and by virtue

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1 of the laws of the State of Montana (Section 2-15-2101, MCA).

2 2. Defendant COLUMBIA FALLS ALUMINUM CO., ("CFAC") is  
3 a Montana corporation which operates an aluminum reduction  
4 plant located near Columbia Falls, Flathead County, Montana.

5  
6 II.

7 JURISDICTION AND VENUE

8 3. The DEPARTMENT is charged with the duty of enforc-  
9 ing the State's health laws and bringing actions necessary to  
10 abate, restrain or prosecute the violation of public health  
11 laws (Sections 50-1-103(1) and 50-1-202(15), MCA). Specifi-  
12 cally, the DEPARTMENT is charged with the administration and  
13 enforcement of the Montana Clean Air Act, Title 75, Chapter  
14 2, MCA, ("the Act") and, pursuant to Section 75-2-413, MCA,  
15 is specifically authorized to commence civil actions to abate  
16 violations of the Act and to seek recovery of civil penalties  
17 for violations of any rule, order, or permit made or issued  
18 under the Act.

19 4. The District Court of Flathead County has jurisdic-  
20 tion over this matter since the violation of State law al-  
21 leged herein has occurred in Flathead County.

22  
23 III.

24 NATURE OF CLAIM

25 5. CFAC has violated the Montana Clean Air Act, Title

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1 75, Chapter 2, MCA, and rules adopted thereunder. Specifi-  
2 cally, CFAC has violated Administrative Rules of Montana  
3 (ARM) Section 16.8.1404(1).

4 6. The DEPARTMENT seeks the assessment and recovery of  
5 a civil penalty as provided in Section 75-2-413, MCA, and for  
6 an order as provided in Section 75-2-412, MCA, enjoining  
7 CFAC's noncompliance with ARM 16.8.1404(1) at its Columbia  
8 Falls facility.

9  
10 IV.

11 CLAIM FOR RELIEF

12 7. The DEPARTMENT re-alleges Paragraphs (1) through  
13 (6) and further alleges as follows:

14 8. In accordance with its responsibility under Section  
15 75-2-203, MCA, the Montana Board of Health and Environmental  
16 Sciences has adopted the following standards regarding vis-  
17 ible emissions:

18 16.8.1404 VISIBLE AIR CONTAMINANTS

19 (1) No person may cause or author-  
20 ize emissions to be discharged into the  
21 outdoor atmosphere from any source in-  
22 stalled on or before November 23, 1968,  
23 that exhibit an opacity of forty percent  
(40%) or greater averaged over six (6)  
consecutive minutes. The provisions of  
this section do not apply to transfer of  
molten metals or emissions from transfer  
ladles.

24 (2) No person may cause or author-  
25 ize emissions to be discharged into the  
outdoor atmosphere from any source in-  
stalled after November 23, 1968, that

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1 exhibit an opacity of twenty percent  
2 (20%) or greater averaged over six (6)  
consecutive minutes.

3 (3) During the building of new  
4 fires, cleaning of grates, or soot blow-  
5 ing, the provisions of sections (1) and  
6 (2) shall apply, except that a maximum  
7 average opacity of sixty percent (60%) is  
permissible for not more than one (1)  
four-minute period in any sixty (60)  
consecutive minutes. Such a four-minute  
period means any four (4) consecutive  
minutes.

8 (4) This rule does not apply to  
emissions from:

9 (a) wood-waste burners;

10 (b) incinerators;

11 (c) motor vehicles;

12 (d) those new stationary sources  
listed in ARM 16.8.1423 for which a visi-  
ble emission standard has been promul-  
gated; or

13 (e) residential solid-fuel combus-  
tion devices such as fireplaces and wood  
or coal stoves.

14 9. On July 27, 1988, Mr. Warren Norton, an environmen-  
15 tal specialist with the DEPARTMENT's Air Quality Bureau,  
16 conducted visible emission tests on the CFAC paste plant  
17 stack and documented a violation of the 40% opacity limit set  
18 forth in ARM 16.8.1404(1) VISIBLE AIR CONTAMINANTS. A copy  
19 of the citation is attached hereto and incorporated herein by  
20 reference. Since that time, CFAC has been investigating  
21 various alternatives in an attempt to bring about compliance.

22 10. The excessive emissions from CFAC's paste plant  
23 stack as documented by the DEPARTMENT constitute a violation  
24 of the Montana Clean Air Act. Section 75-2-413, MCA, author-  
25 izes the DEPARTMENT to seek and recover civil penalties up to

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1 a maximum of \$10,000 per violation from persons violating the  
2 Act. Section 75-2-412(4), MCA, authorizes the DEPARTMENT to  
3 seek injunctive relief to abate violations of the Act.  
4

5 WHEREFORE, Plaintiff, DEPARTMENT OF HEALTH AND ENVIRON-  
6 MENTAL SCIENCES prays for the following relief:

7 1. That in accordance with Section 75-2-413, MCA, the  
8 Court assess and impose a civil penalty against CFAC in the  
9 amount of TEN THOUSAND DOLLARS (\$10,000) for CFAC's violation  
10 of state law.

11 2. That in accordance with Section 75-2-412(4), MCA,  
12 the Court order CFAC, within 30 days of the date of Order, to  
13 submit for DEPARTMENT review and approval, a Plan of Correc-  
14 tion designed to assure that CFAC's facility complies with  
15 the opacity and other requirements of ARM 16.8.1404(1) and  
16 further that such Plan of Correction shall set forth a sche-  
17 dule for designing and implementing a control system of  
18 either (1) dry scrubbing, (2) wet scrubbing, or (3) incinera-  
19 tion and that such schedule at a minimum, provide for the  
20 following:

21 (a) On or before March 15, 1989, CFAC shall  
22 perform the necessary field sampling, equipment  
23 sizing and preliminary costs analysis as a precu-  
24 sor to selecting the appropriate pollution control  
25 equipment.

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1 (b) On or before March 15, 1989, CFAC shall  
2 complete engineering analysis and system design;

3 (c) On or before March 30, 1989, CFAC shall  
4 complete and send out for bid, preliminary equip-  
5 ment designs for such control systems as are under  
6 consideration.

7 (d) On or before May 1, 1989, CFAC shall  
8 evaluate all vendor proposals and choose a final  
9 control design and equipment vendor and submit that  
10 information to the DEPARTMENT in the form of a  
11 written permit application, no later than May 1,  
12 1989. The DEPARTMENT shall evaluate and determine,  
13 in accordance with ARM Title 16, Chapter 8, Sub-  
14 chapter 11, whether the proposed permit application  
15 is approved.

16 (e) If the permit application is approved,  
17 CFAC, no later than 25 days after such approval,  
18 shall issue all necessary purchase orders for the  
19 control equipment approved as provided in item d.

20 (f) CFAC must make provisions to receive all  
21 necessary control equipment on or before August 1,  
22 1989.

23 (g) On or before October 15, 1989, all neces-  
24 sary control equipment shall be installed and rend-  
25 ered operational.

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1 (h) On or before December 15, 1989, testing  
2 shall be completed and compliance demonstrated at  
3 the paste plant stack.

4 3. For such other relief as the Court deems necessary  
5 and proper.

6  
7 Respectfully submitted this \_\_\_\_\_ day of January,  
8 1989.

9  
10 STATE OF MONTANA

11  
12 By \_\_\_\_\_  
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(COMPLAINT & APPL. FOR INJUNCTION)